APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 80-1897

SHELDON R. WAXMAN,

Plaintiff/Appellant,

vs.

CITY OF CHICAGO, et al.,

Defendants/Appellees.

PETITION FOR REHEARING, WITH SUGGESTIONS FOR REHEARING *EN BANC*
(Filed April 27, 1982)

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SELDON R. WAXMAN, Plaintiff/Appellant, respectfully petitions this Court for a rehearing in the above-captioned appeal, from the Order of this Court dated April 14, 1982 (attached Appendix A-1, A-2). Further, appellant suggests that a rehearing *en banc* would be appropriate, as outlined below.

In support of this petition, appellant states as follows:

1. This Court's Order of April 14, 1982, as well as the Court's prior decision in *Hanson* v. *Circuit Court*, 591

F.2d 404 (7th Cir.), *cert. denied*, 444 U.S. 907 (1979), exceeds United States Supreme Court standards relating to "custody" requirements for habeas corpus cases.

2. Appellant has been free on bond throughout the course of these proceedings, in any event. Apparently, an additional warrant has issued against appellant.

3. While labeling appellant's §1983 arguments as "imaginary" and "frivolous", this Court simultaneously denied appellant's Motion to Consolidate (attached Appendix App. 6) this case with the appeal of *Powe & Waxman* v. *City of Chicago, et al.*, #82-1471, a case wherein the §1983 claims are also presented.

4. The panel's decision is clearly erroneous, and the entire Court should determine whether it wishes to continue with the outdated *Hanson* standards.

WHERFORE, plaintiff/appellant respectfully requests that this Court permit a rehearing in the above appeal, and suggests that an *en banc* rehearing would be appropriate.

Respectfully submitted,

SHELDON R. WAXMAN
Plaintiff/Appellant

SHELLY WAXMAN & ASSOCIATES
30 W. Washington St. #1115
Chicago, IL 60602
(312) 782-1360

I, ROBERT K. MAYER, one of appellant's attorneys, do hereby certify that I delivered a copy of this document upon opposing counsel, by first class U.S. mail, this 27th day of April, 1982.

.....

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted: March 25, 1982*

April 14, 1982

Before

Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. HARLINGTON WOOD, JR., *Circuit Judge*

No. 80-1897

SHELDON R. WAXMAN,

Plaintiff-Appellant,

vs.

CITY OF CHICAGO, RICHARD LEFEVOUR, and RICHARD BRZECZEK, Chicago Police Superintendent,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 80-C-2497
Marvin E. Aspen, *Judge*.

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively decided oral argument was unnecessary. The notice provided that any party could file a "Statement as to Need for Oral Argument." Having considered the appellant's Statement as to Need for Oral Argument, the court has concluded oral argument is not necessary. The case is submitted for decision without oral argument.

ORDER

Sheldon R. Waxman was found guilty in the Circuit Court of Cook County of violations of certain City of Chicago parking ordinances. He was ordered to pay a fine of $320. Waxman then brought a petition for a writ of habeas corpus in district court alleging that his conviction was unconstitutional. The district court, *sua sponte*, dismissed Waxman's petition. For the reasons set forth below, we affirm.

The district court, after noting that Waxman had been ordered to pay $320 fine, dismissed his petition on the ground that Waxman did not meet the custody requirement in 28 U.S.C. § 2254. In doing so, the district court correctly relied on our recent decision *Hanson* v. *Circuit Court of First Judicial Circuit*, 591 F.2d 404 (7th Cir.), *cert. denied*, 444 U.S. 907 (1979). In *Hanson*, we held that "a fine-only conviction is not a restraint on individual liberty." *Id.* at 407. With his $320 fine, Waxman cannot be considered to be in custody. We also note that in the immediate case, as was the case in *Hanson*, the district court did not have before it any allegations that confinement was imminent or that the petitioner was unable to pay the fine and would be incarcerated for such failure. Based on the record before it, the district court was correct in dismissing Waxman's petition.

Waxman now asserts on appeal that confinement is imminent. Even if this were true, his petition would still have to be dismissed because Waxman has failed to exhaust his state remedies. It is axiomatic that a state "prisoner" petitioning for a writ of habeas corpus must exhaust his available state court remedies. *Picard* v. *Connor*, 404 U.S. 270, 275 (1971). *See also Rose* v. *Lundy*, ... U.S. ....., 50 U.S.L.W. 4272 (March 3, 1982). Wax-

man's unadorned statement that "[p]etitioner has not appealed his conviction—all his state remedies are futile" is hardly sufficient to circumvent the exhaustion requirement.

Finally, Waxman contends that the district court erred in dismissing an allegation brought pursuant to 42 U.S.C. § 1983. However, nowhere in his petition for habeas corpus relief or in his "motion to reconsider" does Waxman even allege a cause of action pursuant to 42 U.S.C. § 1983. A claim of error on an imaginary allegation must be considered, at the very least, frivolous.

For the reasons discussed above, the order of the district court is AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

April 9, 1982

No. 82-1471

By the Court:

ANDREW POWE and SHEL WAXMAN,
Plaintiffs-Appellants,

vs.

CITY OF CHICAGO, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 81 C 5999
Judge Milton I. Shadur

On consideration of the "MOTION TO CONSOLIDATE" filed herein on March 26, 1982, by counsel for the plaintiffs-appellants,

IT IS ORDERED that said motion is hereby, DENIED.

IT IS FURTHER ORDERED that the following briefing schedule shall apply to the disposition of this appeal:

1. The brief and appendix of the plaintiffs-appellants shall be due herein on or before May 18, 1982.
2. The brief of the defendants-appellees shall be due herein on or before June 16, 1982.
3. The reply brief, if any, of the plaintiffs-appellants shall be due herein on or before June 30, 1982.

APPENDIX D

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
June 22, 1982
Before
Hon. ROBERT A. SPRECHER, *Circuit Judge**
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. HARLINGTON WOOD, JR., *Circuit Judge*

No. 80-1897

SHELDON R. WAXMAN,
Plaintiff-Appellant,

vs.

CITY OF CHICAGO, RICHARD LEFEVOUR, and RICHARD BRZECZEK, Chicago Police Superintendent,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 80-C-2497
Marvin E. Aspen, *Judge*.

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *in banc* filed in the above-entitled cause by Sheldon R. Waxman, plaintiff-appellant, no judge in active service has requested a vote thereon, and a majority of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

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* The Honorable Robert A. Sprecher passed away before the petition was considered by the court.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 80-1897

SHELDON R. WAXMAN,

Plaintiff-Appellant,

v.

CITY OF CHICAGO, RICHARD LEFEVOUR and RICHARD BRZECZEK, Chicago Police Superintendent,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 80-C-2497
Hon. Marvin E. Aspen, *Judge*.

STATEMENT AS TO NEED OF ORAL ARGUMENT

We have received no suggestion "that oral argument may not be helpful in deciding this case." Furthermore, the "Notice", dated November 28, 1960, which we received provides no clue as to who might have made such a suggestion.

We believe that in such an important case as this—one which involves the viability of the Great Writ of Habeas Corpus—oral argument is a necessity. Contrary to Judge Campbell's opinions, we believe that oral argument, no matter the amount of time allowed, is "helpful" in deciding *any* case.

This case involves a situation where the appellees (on appeal) abandoned the rationale utilized by the trial court

in its dismissal of the Petition for Writ of Habeas Corpus. The trial court did not require the appellees to respond to appellant's Petition and, therefore, the orderly procedural presentation of argument to the trial court was circumvented.

This court, also, proposes to circumvent usual appeal procedures. Assumedly, whatever rationale this court utilizes to dispose of the case (assuming it is unfavorable to appellant) might be similarly abandoned by appellees at a future stage of this litigation. Only a hearing (oral argument) can avoid such a possibility.

We realize that this case ultimately involves sensitive, substantive issues (the constitutionality of the City's application and enforcement of parking ordinances); however, this court is only being asked to review procedural matters at this stage.

Additional authority which would have been provided to this court prior to oral argument are: *Hanna, et al* v. *Toner, et al.*, 79-3476, ... F.2d ..... (6th Cir. #79-3476, September 2, 1980) and *Boyd* v. *New Jersey*, ... F.2d ..... (3rd Cir. #79-2663, September 29, 1980).

Hanna holds that abstention is improper if used to avoid conflict with state policy. *Boyd* states that Federal Habeas Corpus is appropriate where there has been an inadequate opportunity to present a Federal claim.

Respectfully submitted,

/s/ Shelly Waxman
SHELLY WAXMAN, pro se

SHELLY WAXMAN & ASSOCIATES
30 West Washington Street
Suite 1115
Chicago, Illinois 60602
(312) 782-1360

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHELDON R. WAXMAN,

Petitioner,

No. 80 C 2497 vs.

CITY OF CHICAGO, JUDGE RICHARD LEFEVOUR, and Chicago Police Superintendent RICHARD BRZECZEK,

Respondents.

PETITION FOR ISSUANCE OF WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2254

Now comes SHELDON R. WAXMAN, the Petitioner herein, by and through his attorney, ROBERT K. MAYER, and complains of the Respondents as follows:

1. This lawsuit is brought pursuant to 28 U.S.C. §2254, for violations of Petitioner's constitutional rights. Relief is also sought, pursuant to 28 U.S.C. §2201, 2202.

2. Petitioner was unconstitutionally convicted of criminal offenses in the Circuit Court of Cook County, Illinois, Municipal Department, First District (Traffic Court); Judge Richard Lefevour presiding; Docket No. D 4068027; for alleged violations of the City of Chicago's municipal parking ordinances.

3. Petitioner has been fined in the amount of $320.00, and is free on $2,500.00 bond (10% posted). See Attached Exhibit A.

4. Petitioner was unconstitutionally convicted *ex parte* of the above described offenses.

5. Petitioner is scheduled to appear in "Courtroom" 103, in the state court, on May 21, 1980, and will enter a plea of not guilty, if allowed to do so.

6. Petitioner was convicted without a jury.

7. Petitioner has not appealed his conviction—all his state remedies are futile.

8. Petitioner's contention is that the Respondents are promulgating, enforcing, and applying municipal parking ordinances for purposes of illegal taxation in violation of the due process and equal protection clauses of the Fourteenth Amendment; and to that end, they have utilized various unconstitutional methods to increase the number of actual "offenses", to increase the number of "tickets" issued, to increase the amounts of the fines (both authorized and imposed), and to increase the number of so-called "scofflaws" prosecuted—all for the unconstitutional purpose of attempting to increase the City of Chicago's revenues. These actions constitute a de facto taxation, imposed upon the Petitioner, and others, without due process of law, and without any rational relationship to "parking ordinances" or to their "enforcement."

9. The unconstitutional acts of the Respondents include, but are not limited to, the following:

a) the posting of "no parking" signs for entire streets and areas, on less than 24 hour notice, for the purported purpose of "street cleaning" in highly populated areas of the City of Chicago, and the ticketing of automobiles, including the Petitioner's, in mass. Attached hereto, as Exhibit B, is a copy of such a sign, which was thrown away by the crew in one area.

b) The increase of parking fines has been for the specific purpose of attempting to increase revenue for the City of Chicago, and is unrelated to "parking enforcement."

c) The increase in the "enforcement" of parking ordinances is not for purposes rationally related to safety, vehicle control, and other valid police power purposes. Rather, it is for the purpose of raising revenue. It is an illegal tax in the guise of a "police power"; and this is violative of the Fourteenth Amendment's due process clause because it constitutes a "taking" without following the strict guidelines relating to tax enactments. Moreover, it is violative of the Fourteenth Amendment's equal protection clause, in that the ordinances *as applied*, are arbitrary, capricious, and enforced without rational relationship to their purposes.

d) The "crackdown" on the so-called "scofflaws" is for the purpose of increasing revenues for the City of Chicago; and to intimidate the Petitioner, and others, to pay the illegal taxation.

e) Within the last year, the City of Chicago has dramatically increased the number of arrest warrants issued to alleged parking ordinance violators. Whereas warrants had previously been issued only to those with 100 or more alleged parking tickets, warrants are now issued for persons, such as Petitioner, with as few as 16. Furthermore, the City of Chicago threatens thousands of persons each year, that unless they pay their "fines", arrest warrants will be issued, although the City has no intention, in fact, to issue warrants to most of those threatened. This type of conduct constitutes a selective prosecution, and is prohibited by the due process and equal protection clauses of the Fourteenth Amendment. The wholesale threats upon citizens, without any intention to carry them out, constitute the type of prosecutorial conduct, and invasion of the fundamental rights of our society, as to shock the conscience of the Court, to violate the public policy, and

to be fundamentally unfair, all in violation of the due process and equal protection clauses of the Fourteenth Amendment.

10. Petitioner's claim is that Respondents are utilizing these municipal ordinances regarding parking violations in an unconstitutional manner, as outlined above; and that his convictions therefor should be voided;

11. Abstention is not appropriate in this case, in that the traffic court of the Circuit Court of Cook County, and also the Illinois appellate courts, are incapable of enforcing the Petitioner's federal constitutional rights; and it is specifically alleged that this case falls within one of the abstention exceptions enunciated in *Younger* v. *Harris*, 401 US 37 (1971).

WHEREFORE, Petitioner, SHELDON R. WAXMAN, prays that this Court grant him habeas corpus relief, and declare that the unlawful judgment of conviction is unconstitutional, void, and of no force and effect. If the abstention issue is raised, then Petitioner requests that a hearing be conducted, so that Petitioner be allowed to present evidence that this case falls within one of the exceptions. Petitioner further requests that he be granted such other and further relief to which he may be entitled.

Respectfully submitted.

SHELDON R. WAXMAN
Petitioner

By: */s/ Robert K. Mayer*

ROBERT K. MAYER
His Attorney

I, SHELDON R. WAXMAN, do hereby declare that the above and foregoing allegations are true, based on information and belief, under penalty of perjury.

/s/ Sheldon R. Waxman
SHELDON R. WAXMAN

ROBERT K. MAYER
Attorney at Law
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30 W. Washington Street
Chicago, Illinois 60602
Telephone: 236-3489

APPENDIX G

December 9, 1977

Richard LeFevour
Supervising Judge
Traffic Center
321 N. LaSalle St.
Chicago, Illinois 60610

RE: City of Chicago v. Andrew Powe
Bond Number I-445510

Dear Judge LeFevour:

Enclosed is a copy of a bond and court appearance concerning outstanding parking tickets with respect to my client, Andrew Powe. As you will note, the date of appearance was December 8, 1977 at 10:30 a.m. in "Room 70".

My client has been falsely imprisoned on four separate occasions. As a result, he filed a lawsuit in the U.S. District Court entitled: *Powe* v. *City of Chicago and County of Cook*, No. 76C 3811. The case is presently pending before Judge Kirkland.

Since my client's first false imprisonment, he has been attempting to clear up outstanding traffic violations which had been asserted against him in order that they not be used as a pretext for further false imprisonments. He has come to the Traffic Center on several occasions in order to attempt payment on outstanding tickets. On some occasions, he has paid for what has been asserted against him.

Consistently, however, he has advised me that he is unable to obtain satisfactory treatment, and has, therefore, been unable to prevent the repeated reassertion of minor traffic offenses against him.

In order to confirm the existence of these difficulties, and as a result of his fourth false imprisonment on November 5, 1977, at which these minor traffic offenses were again asserted, I went with Mr. Powe to the Traffic Center. Our intent was to pay and/or make arrangements for payment of any outstanding matters which are attributable to Mr. Powe.

Observing the directions of the court appearance portion of the attached "I" Bond, I proceeded to "Room 70". Unfortunately, "Room 70" was a cash register. "Room 70" is contained within "Room 101", which is a number of cash registers. I was directed from "Room 101" to "Room 103". "Room 103" was a counter with at least two hundred people on one side and three or four on the other side. I spoke with Mr. Hikawa and advised him that my client was willing to pay $200. down on his outstanding obligations and was willing to enter into a payment plan as to the remainder, assuming the validity of all of the outstanding tickets. Mr. Hikawa referred me to "Room 219" which again turned out to be a cash register. After waiting for fifteen minutes with my client at "Room 219" for "the file" we then went back to "Room 103".

I asked Mr. Hikawa for his assistance and did not receive a response. Since I had been in the "Courthouse" since 10:15 a.m., and, realizing that it was 11:45 a.m., and I was no closer to my objective than I had originally been, I left and my client left upon my advice.

Enclosed is my appearance in this undocketed matter. If a warrant has been issued, please consider this my Motion for a Recall of any such warrant. Also, please consider this as my Motion to Vacate any and all judgments which may have been alleged because of "nonappearance" of my client on the date and time scheduled.

Although I believe the conduct which is presently occurring in your Court is unconstitutional on many grounds and susceptible to class action treatment, I do not wish to make a big deal about this. I only want fair and considerate treatment for myself and my client so that future and additional false imprisonments of Mr. Powe can be prevented.

I am sending a copy of this letter to Jennifer Duncan-Brice, who is the Assistant Corporation Counsel assigned to the matter before Judge Kirkland. I am also requesting her assistance. I do not wish to involve and combine this matter with the case presently outstanding before Judge Kirkland; however, I do feel there is a connection. Please contact me and I will make myself and Mr. Powe available at your convenience.

Very truly yours,

/s/ *Sheldon R. Waxman*
Sheldon R. Waxman

SRW:cb

Encl.

cc: J. Duncan-Brice
Richard Hikawa
Andrew Powe